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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-197984

JUN 11 1980

Lieutenant Colonel Donald C. Nichols, USAF,  
Retired  
4305 Hakupapa Street  
Honolulu, Hawaii 96818

Do not make available to public reading

Dear Colonel Nichols:

This is in response to your letter of April 14, 1980, in which you raised the question of the applicability of a statute of limitations against the Government in any claim which it might have against you in the future.

Your question arises as the result of our decision B-197984, April 30, 1980, involving a shipment of your household goods in connection with a permanent change of station. We concluded that the collector, of \$77.13 from you due to the excess weight of the shipment was proper. In that case you contended that the shipment of the excess weight had been authorized, but you did not have a copy of the message, nor could the message be found in Government records. You now ask if there is a statute of limitations applicable to the Government which would preclude a claim being asserted against you sometime in the future which arose in connection with a permanent change of station or temporary duty assignment when the orders, messages, etc., authorizing that move cannot be produced by you.

With the enactment of Pub. L. 89-505, July 18, 1966, 80 Stat. 304, Congress imposed a general statute of limitations on civil actions brought by the United States. See 28 U.S.C. § 2415. The law provides in section 2415(a) that every action for money damages brought by the United States which is founded upon any contract express or implied in law or fact, shall be forever barred unless the complaint is filed within 6 years after the right of action accrues. Similarly, section 2415(d) imposes a 6-year statute of limitations on actions brought by the United States to recover money erroneously paid to a Federal employee or member of the uniformed service.

This limitation on actions by the Government, however, is not applicable to administrative setoff by the Government for debts owed it from amounts otherwise due an individual, in certain cases. See 58 Comp. Gen. 501 (1979) and 28 U.S.C. § 2415(f). However, as a



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general rule, retired or retainer pay is not subject to administrative setoff without the debtor's consent. See Baker v. McCarl, 24 F.2d 897 (1928) and 47 Comp. Gen. 400 (1968). Thus, as can be seen there are limitations on actions which may be taken by the Government.

Furthermore, in any action taken by the Government it has the burden of proving its claim. The record in your case reveals that you were transferred in August 1974. You were notified as to the indebtedness on June 1, 1976, less than 2 years after the transfer. At that time evidence was available establishing your indebtedness. While it is unfortunate that at the time of the collection you could not produce the authorization for the excess weight shipment in support of your claim, in the circumstances this Office had no alternative but to deny your claim.

We trust the foregoing provides the information you requested.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma  
Assistant General Counsel